

### REMARKS

Claims 15-38 were pending in the present application, and are rejected. Applicants gratefully acknowledge the Examiner's indication that claims 37 and 38 are allowable upon filing of a terminal disclaimer. Claim 15 has been amended to incorporate the limitations in allowable claim 37, and is thus allowable. Furthermore, claim 38 has been canceled, and new claims 39-41 have been added. Applicants have also changed the dependencies of claims 17 and 18 to depend from new claim 41. Thus, claims 15-37 and 39-41 are pending. Applicants address the Examiner's rejection in view of amended claim 15.

#### Double Patenting

The Examiner rejected claims 15-38 under the judicially created doctrine of obviousness-type double patenting, as allegedly being unpatentable under claims 1-12 of U.S. Patent No. 6,074,666. Applicant submits herewith a terminal disclaimer (Exhibit 1) to obviate the Examiner's rejection of claims 37 and 38, and respectfully request that this rejection be withdrawn.

#### Rejections under 35 U.S.C. §§ 102(e) and 103

The Examiner rejected claims 15-20 and 30-34 under 35 U.S.C. § 102(e), as allegedly being anticipated by Madden (U.S. Patent no. 5,389,378). Furthermore, the Examiner made six rejections under 35 U.S.C. § 103. First, the Examiner rejected claims 15-18, 20-25 and 30-36, as allegedly being unpatentable under Madden. Second, the Examiner rejected claims 28-29, as allegedly being unpatentable under Madden in view of Barenholz (U.S. Patent No. 4,797,285). Third, the Examiner rejected claims 20-25, as allegedly being unpatentable under Madden, further in view of Applicants' alleged statements of prior art. Fourth, the Examiner rejected claims 15-18, 20-25 and 30-36, as allegedly being unpatentable under Thompson (U.S. Patent No. 5,277,913) or Kappas (U.S. Patent No. 5,010,073), in view of Crowe (U.S. Patent No. 4,857,319), further in view of Madden. Fifth, the Examiner rejected claims 28-29, as allegedly being unpatentable under Thompson or Kappas, in view of Crowe and Madden, further in view of Barenholz. Finally, the

Examiner rejected claims 20-25, as allegedly being unpatentable under Thompson or Kappas, in view of Crowe, further in view of Applicants' alleged statements of prior art.

As amended, claim 15 relates to liposomal formulations comprising liposomes that comprise phosphatidyl choline, phosphatidyl glycerol and a porphyrin macrocycle photosensitizer, wherein the liposomes have a mean particle size distribution of less than 200 nm. As indicated in the Declaration of David Dolphin Pursuant to 37 C.F.R. § 1.1.31(a) (copy attached as Exhibit 2 for the Examiner's convenience), the claimed liposomal formulations were made prior to the August 17, 1990 effective filing date of Madden (U.S. Patent no. 5,389,378). Thus, Madden is not prior art. Furthermore, none of the prior art cited by the Examiner describe liposome formulations comprising phosphatidylcholine, phosphatidyl glycerol and a porphyrin macrocycle photosensitizer. Thus, Applicants respectfully request that the rejections under 35 U.S.C. §§ 102 and 103 be properly withdrawn. As the new claims 39-41 are dependent from allowable claim 15, these claims are also allowable.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket

no.273012008102. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

By   
Emily C. Tongco

Registration No.: 46,473  
MORRISON & FOERSTER LLP  
3811 Valley Centre Drive, Suite 500  
San Diego, California 92130  
(858) 314-5413